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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of June, 1998

Before:

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Writ Petition No. 11483 of 1992

1. Mrs. Tahera Begum,
w/o Shri Mohd. Jameeruddin,
Occupation: Household,
Plot No.76, Mansabdar Colony,
Sedam Road,
Gulbarga;
2. Narasinga Rao,
s/o Rama Rao,
Gulbarga;
3. Manik Rao,
s/o Rama Rao,
Gulbarga;
4. Sharad Rao,
s/o Rama Rao,
Gulbarga

.. Petitioners

(Petitioners 2 to 4 are represented by
Power of Attorney Holder Shri Syed
Khursheed Ali, s/o Syed Muneer Ali,
Gulbarga)

(By Sri S.M.Chandrashekar, Advocate)

-Vs-

1. The State of Karnataka,
Housing & Urban Dev. Dept.,
represented by its Secretary;
2. Gulbarga Development Authority,
Gulbarga, represented by its
Commissioner;
3. The Corporation of the City of
Gulbarga, represented by its
Commissioner

.. Respondents

(By M/s. Patil ~~and Patil~~, Associates, Adv., for R2;
Sri Basava Prabhu Patil, Advocate for R3)

Writ Petition is filed praying to quash the Notification dated 15-6-1989 and Notification dated 14-1-1992 vide Annexure-B & H and etc.,

This petition is coming on for preliminary hearing in 'B' Group this day, the Court made the following:-

O R D E R

The petitioners claim that petitioners 2 to 4 were the owners of Sy.Nos. 199, 120 and 121 of Badeput Village, Sedam Road, Gulbarga, measuring 10 acres 5 guntas, 1 acre 10 guntas and 7 acres 6 guntas respectively and that they formed a layout of 272 sites in the said lands and sold site No.76 to the first petitioner and remaining sites to others. Thus, according to petitioners, petitioners 2 to 4, had no interest in the said lands on the date of filing the writ petitions. Only the first petitioner claims that she has an interest in regard to site No.76 measuring 1275 sq.ft. having purchased it under a registered sale deed dated 13-3-1987 (Annexure-D).

2. The second respondent issued a preliminary Notification dated 15-6-1989 under Section 17 and after sanction of the scheme by the State Government by order dated 3-9-1991, a final declaration dated

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14-1-1992 under Section 19 of the Karnataka Urban Development Authorities Act, 1987 (for short 'the Act'), acquiring the said lands and other lands for formation of a layout for the benefit of public. The grievance of the petitioners is that the site holders were not issued any notice in regard to acquisition of said lands and therefore, the provisions of Section 17(5) of the Act has been violated. The petitioners also contend that as a layout was formed by the petitioners 2 to 4 as per the Zonal Regulations and the sites were already sold, there was no need for developing the said lands again by the second respondent, by acquiring the land lands. It is also contended that the entire area had fallen within the jurisdiction of the third respondent and that the purchasers of the sites including the first petitioner have put up constructions in their sites and therefore, the second respondent cannot validly acquire the lands. Lastly it is contended that the State Government had issued a notification providing for regularisation of unauthorised constructions and therefore the constructions in the said lands should be regularised. On these grounds, the petitioners have filed this petition and sought quashing of Notifications dated

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16-6-1989 and 14-1-1992 as also the Government order dated 3-9-1991 sanctioning the scheme. They have alternatively sought a direction to the respondents to regularise or reconvey or renotify Sy.Nos 119, 120 and 121 under Section 20(7) of the Act.

3. It is evident from the petitioner averments that the claim of petitioner No.1 relates to only a small site measuring 1275 sq.ft and nothing more in the layout alleged to have been formed in Sy.No.119, 120 and 121. Petitioners 2 to 4 have no subsisting interest or claim as they claim that they formed a layout and sold all the sites. The alleged purchasers are not parties and such purchasers have not sought any relief in regard to the sites said to have been purchased by them. Petitioners 2 to 4 as Kathedars were served with notices in¹regard to acquisition. In the circumstances, petitioners 2 to 4 are not entitled to maintain this petition. Therefore, this petition will have to be restricted only regard to the site No.76 measuring 1275 sq.ft claimed by petitioner No.1. The petition in so far as¹remaining extent of said survey numbers is liable to be rejected in limine, as the petitioners have no right in regard to such lands.

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4. The first contention of first petition is that she has not been served with any notice regarding the acquisition of land, as required under the Act. The notifications show that what was acquired were Sy.Nos. 119, 120 and 121 along with other certain Survey Numbers. The relief prayed is also in regard to Sy.Nos 119, 120, and 121. The sale deed dated 13-3-1987 (Annexure-D) said to have been executed by the petitioners 2 to 4 in favour of first petitioner does not refer to the survey numbers 119, 120 and 121 at all, but relates to an open space bearing No.76, formed in CTS Nos 2855 and 2856 in Block No 5 of Badepur Sedam Road Extension, Gulbarga. It is significant to note that the total extent of CTS Nos 2855 and 2856 is not given. The second respondent has contended that Sy.Nos. 119, 120 and 121 were not converted to nonagricultural purpose and the alleged private layout formed by the petitioners 2 to 4 was not approved by any Authority. The petitioners have not produced any documents to show that the lands in question were converted or that they were assigned CTS Nos 2855 and 2856. There is nothing to link site No. 76 in CTS 2855-2856 to Sy.Nos 119, 120 and 121

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acquired by the second respondent. The first petitioner has produced copies of two receipts (Annexure-E dated 11-11-1991 and Annexure-F dated 5-2-1992) said to have been issued by the third respondent, for having collected Development charges and Taxes in regard to plot No.76 (in CTS Nos 2855 and 2856) from petitioner during 1990-91 and 1991-92. The second respondent has contended that these documents were obtained by first petitioner from the third respondent by misrepresentation of facts and subsequently the third respondent had cancelled them on 28-5-1992. It is unnecessary to examine the validity of these documents in this petition.

5. As pointed out above, as the survey number has not been mentioned in the sale deed and as the name of first petition is not entered as the holder or person in possession or owner or khatedar of any portion of Survey numbers 119, 120 or 121, in the revenue records, there was no obligation on the part of the second respondent to issue any notice to the first ^{Petitioner} ~~respondent~~. It is not in dispute that notices have in fact ~~issued~~ been issued to the persons shown as Khatedars in the Revenue Records. In the circumstances, the petitioners cannot contend that the acquisition is invalid for want of notice.

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6. The second contention is that there cannot be an acquisition of a developed layout for the purpose of development as a Layout. The petitioners have not demonstrated that the lands in question were converted and that a layout of sites was ^{in accordance with the relevant laws} formed and the same was approved by the concerned Authority. It cannot therefore be contended that the land is already developed in accordance with law and therefore it cannot be further developed. The second contention is therefore, rejected.

7. The third contention relates to regularisation. If the first petitioner wants regularisation of any unauthorised construction, it is open to her to make application for regularisation in accordance with law. No such application has been made. If the first petitioner complies with the requirements of the Karnataka Regularisation of Unauthorised Occupation in Urban Areas Act, 1991 the concerned authority will consider and dispose of such application. When the first petitioner has not made any such application, the respondents cannot be directed to consider or regularise her occupation. First petitioner has also not demonstrated that her case is fit for regularisation. In so far as the reconveyance and denotification is

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concerned, the petitioners have not been able to make out any ground for granting such relief.

8. Learned counsel for the petitioners submits that the first petitioner may be permitted to make an application to the second respondent for allotment of site, seeking preference on the ground that she has lost the site purchased by her due to acquisition. The first petitioner is always at liberty to make such application in terms of the Act and relevant Rules and as and when such an application is made, I am sure, the second respondent will consider and dispose of such application in accordance with law.

9. There is therefore no merit in petition and it is accordingly rejected.

Sd/-
JUDGE



pjk/ujk